MONTANA LEGISLATIVE HISTORY

Chapter 379 19 77

Bill H _____ S 365 Original bill & history ✓ C

H. Committee on Public Health Welfare & Safety			S. Committee on Public Health Welfare & Safety		
Hearing Date(s)	Mar 15	✓ C	Hearing Date(s)	Feb 15	✓ C
	Mar 17	C		Feb 15	✓ C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Senate BILL NO. 365

INTRODUCED BY Roberts

A BILL FOR AN ACT ENTITLED: "AN ACT SUBROGATING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO THE RIGHTS OF RECIPIENTS OF MEDICAL ASSISTANCE; AMENDING SECTIONS 71-235, 71-308, 71-511, 71-1524, AND 93-2601-51, R.C.M. 1947."

WHEREAS, it is necessary that the department of social and rehabilitation services pursue third parties who may be liable for medical expenses incurred by recipients of medical assistance and relatives responsible for the support of recipients of public assistance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section numbered 71-241.1 that reads as follows:

71-241.1. Subrogation and third party liability. (1) The state department is subrogated to the right of each needy person who is a recipient of medical benefits under Titles XIX or XX of the Social Security Act to recover damages or compensation from a third party to the extent necessary to reimburse the state department for medical benefits paid to or on behalf of the needy person.

INTRODUCED BILL

LC 1465/01

(2) The state department may, in the name of the needy person to whom or on whose behalf medical benefits have been paid and to whose rights the department has been subrogated, commence and prosecute to final conclusion any action which may be necessary to recover from a third party compensation or damages for medical costs incurred by the needy person. From the amount collected from legal proceedings or as a result of settlement, the department shall retain the full amount previously paid as medical benefits, allocating to the county and federal government a share proportionate to their contribution and, after deducting the costs of the proceeding, deliver the remainder to the needy person. The total amounts awarded as compensation for pain and suffering or which are punitive in nature shall be delivered to the needy person. This section does not affect the needy person's right to initiate and prosecute to final conclusion an action for damages or compensation in his own name.

(3) As used in this section, "third party" means an individual, institution, corporation, or public or private agency which is or may be liable to pay all or part of the medical cost of injury, disease, or disability of a needy person to which Titles XIX or XX benefits have been applied, and includes but is not limited to insurers, health service organizations, and those liable in tort.

Section 2. Section 71-235, R.C.M. 1947, is amended to

SB 365

read as follows:

"71-235. Living relatives -- jointly and severally liable -- scale of contribution. (1) The living relatives of each needy person, named in this act, ~~--shall--be--and--they hereby~~ are made jointly and severally liable in the order named in section 71-233 to such the needy person for the monthly amounts of money determined in accordance with the following scale, to wit:

RELATIVES' CONTRIBUTION SCALE

A. Net monthly income of responsible relatives in one family in dollars	B. Number of persons dependent upon income exclusive of applicant									
	1	2	3	4	5	6	7	8	9	10 and over
	C. Maximum required monthly contribution									
Under 304	0	0	0	0	0	0	0	0	0	0
305 to 399	22	0	0	0	0	0	0	0	0	0
400 to 489	43	14	0	0	0	0	0	0	0	0
490 to 619	72	43	29	22	7	0	0	0	0	0
620 to 739	101	72	58	50	36	29	14	0	0	0
740 to 869	130	101	86	79	65	58	43	29	14	0
870 to 1024	144	130	115	108	94	86	72	58	43	29
1025 to 1179	144	144	144	144	130	123	108	94	79	65
1180 to 1339	144	144	144	144	144	144	144	130	115	101

1340 and up	144	144	144	144	144	144	144	144	144	130

(2) For the purposes of this act:

~~(1)~~(a) A needy person is one who is eligible for public assistance under the laws of this state; and

~~(2)~~(b) "Net net monthly income" ~~shall be deemed to~~ mean means one-twelfth ~~(1/12)~~ of the difference between the net income for the taxable year as the term net income is defined in section 84-4901, ~~subsection ten~~ (10), and the state income tax paid as determined by the state income tax return filed during the current year.

(3) In those cases where both spouses classify as responsible relatives of needy persons during the same period of time, the liability for contribution of each ~~of said spouses~~ spouse during that time ~~shall be considered to~~ be is one-half ~~(1/2)~~ of the amount shown in the scale established by this act.

(4) Whenever the responsible relative owes a duty of support to a minor dependent child and public assistance moneys have been paid to or on behalf of that child, the liability for contribution is measured by the lesser of the amount of public assistance paid or the amount of support ordered by court decree.

(5) A person who is receiving public assistance on behalf of a minor dependent child may not be held liable for contribution for the period during which public assistance

was received."

Section 3. Section 71-308, R.C.M. 1947, is amended to read as follows:

"71-308. Medical aid and hospitalization. (1) Medical aid and hospitalization for nonresidents within the county and county residents unable to provide ~~such~~ these necessities for themselves are the legal and financial duty and responsibility of the board of county commissioners, except as otherwise provided in other parts of this act, and are payable from the county poor fund. The board of county commissioners shall make provisions for competent and skilled medical or surgical services as are approved by the department of health and environmental sciences or the state medical association, or, in the case of osteopathic practitioners, by the state osteopathic association or chiropractors by the state chiropractic association, or optometrical services as approved by the Montana optometric association and or dental services as approved by the dental association. "Medical" or "medicine" as used in this act refers to the healing art as practiced by licensed practitioners.

(2) The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by the physicians appointed by the board who shall be known as county physicians or deputy county physicians,

and may fix a rate of compensation for the furnishing of the medical attendance.

(3) The board of county commissioners shall make suitable arrangements to provide respectable burial for nonresidents within the county and county residents for whom ~~such~~ the expenses are not otherwise available.

(4) The department of social and rehabilitation services may promulgate rules to determine under what circumstances persons in the county are unable to provide medical aid and hospitalization for themselves, including the power to define the term "medically needy". ~~Provided, however, such~~ However, the definition may not allow payment by a county for general assistance-medical for persons whose income exceeds ~~three hundred percent (300%)~~ of the limitation for obtaining regular county general assistance.

(5) In any case where the county or state pays medical expenses or hospitalization for an individual, the county or state is subrogated to the claims of the physician or hospital to the extent of payment. To the extent necessary for reimbursement of medical benefits paid to or on behalf of an individual, the county or state is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical expenses. The provisions of 71-241.1 which relate to medical benefits provided under Titles XIX and XX of the Social Security Act apply to

medical benefits provided for in this section."

Section 4. Section 71-511, R.C.M. 1947, is amended to read as follows:

"71-511. Payment of public assistance money -- subrogation of the department of social and rehabilitation services -- schedule of payments. (1) ~~Any~~ A payment of public assistance money made to or for the benefit of ~~any~~ a dependent child ~~or children~~ creates a debt due and owing to the department of social and rehabilitation services by the natural or adoptive ~~parent or~~ parents who are legally responsible for the support of ~~such children~~ the child by statute or court decree in an amount equal to the amount of public assistance so paid. ~~Provided, that~~ However, where the support obligation is based upon a court decree, the debt ~~shall be~~ is limited to the amount of ~~said~~ the court decree.

(2) The department ~~of social and rehabilitation services shall be~~ is subrogated to the right of ~~said~~ the child ~~or children~~ or person having the care, custody, and control of ~~said~~ the child ~~or children~~ to prosecute ~~or maintain and recover upon~~ any support action or execute any administrative remedy existing under the laws of the state ~~of Montana~~ to obtain reimbursement of monies thus expended. If a court decree enters judgment for an amount of support to be paid by an obligor parent, the department ~~shall be~~ is subrogated to the debt created by ~~such~~ the order and ~~said~~

the money judgment ~~shall be deemed to be~~ is in favor of the department ~~of social and rehabilitation services~~. No obligee may commence an action to recover support due and owing to him without first filing an affidavit with the court stating whether he has received public assistance from any source and, if he has received public assistance, that he has notified the state department in writing of the pending action.

(3) In no case ~~shall~~ may a debt arising under this section be incurred by or collected from a parent or other person who while he is the recipient of public assistance monies for the benefit of minor dependent children ~~for the period such person or persons are in such status~~.

(4) The remedies herein provided are in addition to and not in lieu of existing common law and statutory law.

(5) The department ~~of social and rehabilitation services~~ or its legal representatives may at any time consistent with the income, earning capacity, and resources of the debtor, petition the court having jurisdiction over the particular case to set or reset a level and schedule ~~or~~ of payments to be paid upon the debt."

Section 5. Section 71-1524, R.C.M. 1947, is amended to read as follows:

"71-1524. Exclusion of lien. No applicant hereunder ~~shall~~ may be required to execute an agreement for lien on

his real property. No lien may be imposed against the property of ~~any~~ an individual prior to his death on account of medical assistance paid or to be paid on his behalf (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of ~~such~~ the individual). There ~~shall~~ may be no adjustment or recovery (except, in the case of an individual who was ~~sixty-five (65)~~ years of age or older when he received ~~such~~ the assistance, from his estate, and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age ~~eighteen (18)~~ or is blind or permanently and totally disabled) of any medical assistance correctly paid on behalf of ~~such~~ an individual. To the extent necessary for reimbursement of medical assistance paid to an individual, the state department is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical expenses, as provided in 71-241.1. Recoveries shall be prorated to the federal government and the state in the proportion to which each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974, shall be prorated to reimburse the county share of participation. The provisions of this act are hereby extended to provide for the recovery of all medical assistance paid under ~~sections~~ 71-1511 through 71-1524 and likewise to all medical aid to the aged

assistance paid by the state department during the period of time July 1, 1965, through June 30, 1967."

Section 6. Section 93-2601-51, R.C.M. 1947, is amended to read as follows:

"93-2601-51. Contents and filing of petition for support -- venue. ~~(a)~~(1) The petition shall be verified and shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his social security number.

(2) At the time of filing the petition the obligee shall also file with the court an affidavit as required by 71-511 stating whether he has received public assistance from any source and, if he has received public assistance, that he has notified the department of social and rehabilitation services in writing of the pending action.

~~(b)~~(3) The petition may be filed in the appropriate court of any state in which the obligee resides. The court ~~shall~~ may not decline or refuse to accept and forward the

petition on the ground that it should be filed with some other court of this or any other state where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained jurisdiction for its enforcement."

Section 7. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before July 1, 1977.

Section 8. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. 343-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 2, 19 77, there is hereby submitted a Fiscal Note for SB 365 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

SB 365 is an act subrogating SRS to the rights of recipients of medical assistance.

FISCAL IMPACT:

No dollar estimate can be made for SB 365. The department at present does not have the capability of implementing a program to recover third party liability recoveries as provided for in Section 71-308, R.C.M. 1947. A budget modification has been requested for the 1979 Biennium to pursue third party liability recoveries as provided for in Section 71-308.

The budget modification request for this third party recovery unit is outlined below:

SUMMARY OF 3RD PARTY LIABILITY RECOVERY PROJECTIONS

An acceptable means of estimating third party liability recoveries is on the basis of the percentage of total Medicaid expenditures recovered annually in other states (Washington 2.5%; Michigan 3.9%; Colorado 7.3% projected). Using the most conservative of these comparisons, Montana general fund recoveries could be expected to exceed general fund expenditures by roughly $400,000 during the start-up period this biennium, and at least $400,000 per year thereafter as shown below:

	Total (New) Recoveries	State Share Of Recoveries	State Share Of Program Costs	Net Recovery
Fiscal 1978	$ 525,000.00*	$ 204,225.00	$ 71,635.00	$ 132,590.00
Fiscal 1979	900,000.00**	350,100.00	68,630.00	281,470.00
Fiscal 1980	1,250,000.00***	486,250.00	71,250.00	415,000.00

* First year start-up anticipates 50% of projected 2½% recoveries rate and a total budget of $42 million.

** Second year anticipates 75% of projected 2½% recoveries rate and a total budget of $48 million.

*** Third year anticipates full 2½% recoveries rate and a total budget of $50 million.

It is not possible to estimate the portion of the projected recoveries jeopardized if this bill is not passed.

Richard L. Tranz for
BUDGET DIRECTOR
Office of Budget and Program Planning
Date: February 8, 1977

To which Senator Olson addressed his first question upon conclusion of witnesses' testimony. Senator asked if, with the proposed legislation, he or anyone could still design and build his own home without the service of an architect - the answer was affirmative.

The hearing was concluded on Senate Bill 329, with NO ACTION being taken.

CONSIDERATION OF SENATE BILL 365: Senator Roberts presented this bill, saying he was carrying it at the request of the SRS. The Senator from Libby introduced Pat Melby of the Social & Rehabilitation Services, who had further testimony.

Pat Melby testified that two sub-sections were left out of the proposed legislation. He handed out amendments to the Committee to take care of the omission (see Exhibit "B). Melby said the Department is embarking on an ambitious program of trying to limit the amount of funds paid under Medicaid and also to try to recover funds paid under Medicaid where a third party may be liable for those actual costs.

Richard Weber, also of the SRS, testified next. He explained the Department's need for this bill (see Exhibit "C"). Weber provided a detailed explanation of the different sections.

Chad Smith, lobbyist for the Montana Hospital Association, then testified in opposition of the proposed bill. Smith offered amendments (see Exhibit "D") and said that if those amendments were written into the proposed legislation, his group would support it.

The hearing was concluded and the Committee turned to questioning the witnesses.

The main thrust of the questioning was directed to the problems between the hospitals' needs and the SRS' needs - the hospitals are having problems collecting their monies through Medicaid now; they are concerned about the State being first in line in subrogation.

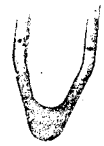
Senator Roberts asked Mr. Smith if Smith was trying to preserve the right to subrogation (through his amendments) and the answer was affirmative.

Mr. Melby reiterated that all the State can or hopes to recover through this legislation are the funds the State spent on that welfare patient, nothing over and above that. He added that the Department should not be put in the position of collection for the hospitals.

Chairman Stephens closed the hearing on SB365, with NO ACTION being taken.

Before adjourning, the Chairman reminded the Committee that action would be taken on SB341, 399, 246 and 269 Thursday, as well as

EXHIBIT "B"



OMITTED From original draft

AMENDMENT OF SENATE BILL 365

Amend Senate Bill 365 following Subsection (2), Page 2, by the addition of:

(3) A needy person who is a recipient of medical benefits, or his legal representative, shall notify the state department of any action initiated, or of any compromise or settlement agreed to by the needy person, or his legal representative, for the recovery of compensation or damages for medical expenses to which medical benefits have been applied.

Notice shall be given by service upon the state department of the legal instrument initiating the action or embodying the compromise or settlement.

(4) No portion of attorney's fees may be withheld from the amount collected from legal proceedings or as a result of settlement which is due the state department under Subsection (3) without prior approval of the state department.

~~(3)~~ (5)

E X H I B I T "C"

TESTIMONY OF DEPARTMENT OF
SOCIAL & REHABILITATION SERVICES
SUPPORTING SENATE BILL 365

Senate Bill 365 is an attempt by the Department of SRS to clarify the Department's right to recover payments made on behalf of a welfare recipient in cases where another party is primarily responsible for that recipient. The attempt is threefold:

First, the Department seeks a legislative statement of the commonlaw doctrine of subrogation. Second, the Department seeks clarification of the amount which may be recovered in ADC cases. Third, the bill provides for notice to the Department when the Department may have some right to recover from a third party.

Subrogation is a creature of equity. The doctrine was developed by the courts to provide a remedy for the party who pays the debt of another person who is the creditor of a third party. The court in effect substitutes the paying party in the place of the creditor who received the benefit of a debt paid. By this substitution the court may, in following the dictates of its conscience, prevent the enrichment of the one party at the expense of another.

There are two common cases in which the Department of SRS should be subrogated to the rights of a recipient.

The first case arises when the Department makes payment of medical benefits to a recipient and that recipient is also entitled to payment from an insurer. In those cases the insurer is contractually bound to make payment to the recipient and the end result is a double payment to or on behalf of the recipient.

This unnecessary cost to the Department can be prevented if the Department is placed in the shoes of the recipient vis a vis the insurer, and is allowed to recover from that insurer the amount which the Department has already paid on behalf of the recipient.

The second type of case arises when a third party is liable in tort to pay the medical expenses of a recipient of medical benefits. In that situation a windfall double payment will be avoided by giving to the Department the right to pursue the tortfeasor in the name of the recipient and share in any recovery to the extent of benefits paid on behalf of the recipient.

E X H I B I T "D"

PROPOSED AMENDMENTS TO SENATE BILL 365:

prepared by Chad Smith,

Montana Hospital Association

1. Page 1, Section 1, line 20.
   Following: "subrogated"
   Insert: "after the providers of medical services"

2. Page 6, Section 3, line 21.
   Following: "subrogated"
   Insert: "after the providers of medical services"

3. Page 9, Section 5, line 15.
   Following: "subrogated"
   Insert: "after the providers of medical services"

The decision to wait to take action on SB355 was made by the Committee due to the discussion on this bill. Senator Lee and Senator Rasmussen expressed concern over a section of the bill dealing with dispensing "devices". Following Senator Rasmussen's amendment to deal with the above matter, Senator Roberts asked the Committee to wait until HB544, which deals with the same problems, comes over and the Committee could work with that bill. It was agreed to wait.

Senator Lee requested the Committee to wait to take action on SB427 until Tuesday, to give Mr. Taylor, Legislative Council Researcher, the opportunity to contact the witnesses (opponents) for the Press Association for further input and also to ascertain whether the opposing witnesses met to work out an amendment.

CONSIDERATION OF SB246 brought a verbal report from Senators Roberts and Olson. The Senators talked with SB246 sponsor, Senator Lowe - Senator Lowe requested, due to the two similar bills in Judiciary Committee, SB246 be held in Public Health Committee with no action. The problem SB246 addresses will be taken care of in other committees. Committee accepting report, NO ACTION taken.

ACTION ON SENATE BILL 365: Discussion before voting brought out amendments (Page 1, Line 20, Following: "subrogated" - Page 6, Line 21, Following: "subrogated" - Page 9, Line 15, Following: "subrogated" - Insert: "after the providers of medical services") presented to the Committee February 17 by Chad Smith. Senator Lee made the motion to move these amendments - by a roll call vote, motion failed, 4 No, 3 Yes (one Senator absent). Senator Roberts moved attached amendments (see Exhibit "A") - by a voice vote, motion carried. Senator Roberts then moved SB365, AS AMENDED, DO PASS - motion carried, 7 Yes, (one Senator absent).

ACTION ON SENATE BILL 329: Following Senator Lee's motion SB329 DO NOT PASS, discussion followed - Senator Olson then made a substitute motion SB329 DO PASS - motion carried, 6 Yes, 1 No (one Senator absent).

ACTION ON SENATE BILL 425: Following a short discussion, Senator Olson moved Senate Bill 425 DO PASS - motion carried unanimously, all present voting yes.

ADJOURNMENT: With no further business at this time, Chairman Stephens adjourned the meeting at 11:55 A.M.

STAN STEPHENS, Chairman

E X H I B I T "A"

AMENDMENT OF SENATE BILL 365

Amend Senate Bill 365 following Subsection (2), Page 2, by the addition of:

(3) A needy person who is a recipient of medical benefits, or his legal representative, shall notify the state department of any action initiated, or of any compromise or settlement agreed to by the needy person, or his legal representative, for the recovery of compensation or damages for medical expenses to which medical benefits have been applied.

Notice shall be given by service upon the state department of the legal instrument initiating the action or embodying the compromise or settlement.

(4) No portion of attorney's fees may be withheld from the amount collected from legal proceedings or as a result of settlement which is due the state department under Subsection (3) without prior approval of the state department.

~~(3)~~ (5)

STANDING COMMITTEE REPORT

February 19 19 77

MR. President

We, your committee on Public Health

having had under consideration Senate Bill No. 365

Respectfully report as follows: That Senate Bill No. 365

introduced bill, be amended as follows:

1. Amend page 2, section 1, line 18.
Following: line 17
Insert: "(3) A needy person who is a recipient of medical benefits, or his legal representative, shall notify the state department of any action initiated, or of any compromise or settlement agreed to by the needy person, or his legal representative, for the recovery of compensation or damages for medical expenses to which medical benefits have been applied.

Notice shall be given by service upon the state department of the legal instrument initiating the action or embodying the compromise or settlement.

(4) No portion of attorney's fees may be withheld from the amount collected from legal proceedings or as a result of settlement which is due the state department under Subsection (1) without prior approval of the state department."
Renumber: subsequent subsection

~~DO PASS~~

AND AS SO AMENDED, DO PASS

SENATOR STAN STEPHENS Chairman.

STATE PUB. CO.
Helena, Mont.

of the bill; it will provide for cooperation among the two professions. Gerald Neely, Montana Medical Association, rose in support of the bill.

There were no opponents to SENATE BILL 105. The sponsor closed. In a report prepared by the U.S. Dept. of HEW, inclusion of optometry in the medical profession was covered. One of their recommendations was to encourage joint development of appropriate laws on the state level to allow use of these drugs.

Questions were then asked. It was not anticipated that the use of these drugs would have much impact on the fee structure of the optometrists, as far as the patient was involved. Rep. Feda wanted to know what changes had been made to the bill that made it palatable to the M.D.'s. The sponsor pointed out that on page 3 the Board of Medical Examiners now has definite input into the courses to be taken by the optometrists. There will be an educational program established in Montana, possibly at the U of M Pharmacy School. Also, one could go out of state for the courses. A normal eye examination will not call for the use of these drugs.

At this point the Chairman Rep. Menahan had to leave; Vice Chairman Holmes took over.

SENATE BILL 365 was then heard. The sponsor was Senator Roberts. He was not present; in his absence Mr. Pat Melby, Director of the Dept. of Social and Rehabilitation Services opened. The bill deals with a project the Dept. of SRS would like to take on dealing with the recovery of substantial funds in the Medicaid program. This is enabling legislation, so they could go to the insurance companies or the third parties and recover the funds expended. This will also provide the money to put the law into effect. Dick Webber, also from the Dept. of SRS, spoke; see prepared testimony. Bill Ikard, Chief of the Medical Assistance Bureau, Dept. of SRS, then spoke. When someone has an insurance policy, the insurance will pay the bill, but if they have two insurance policies or one insurance policy and Medicaid, the person isn't particularly concerned about which one pays. From the Department viewpoint, they feel that the insurance company should pay first, and the taxpayers should pay last.

There were no opponents to SB 365. Mr. Melby closed. Based on other states' experiences, they feel they could recover about 2.5% of their expenditures. By Fiscal Year 1980 a net recovery to the state could amount to about $415,000 per year. Questions were then asked. This bill would not apply to Medicare payments; only Medicaid payments would be covered. This bill would allow the Dept. of SRS to take the

initiative in court actions. It would allow them to go after an insurance company only if they haven't paid. At present, because of the complexities and difficulties of getting a third party to pay for medical services, the health care providers have been coming to the Dept. of SRS; it is much easier for them to go this route. If the insurance company should be paying, this bill would enable the Dept. of SRS to negotiate with them. Rep. Ryan asked Mr. Melby if the county attorneys couldn't do this same thing at present. He answered that they could, but that the Medicaid program is a state program and therefore the counties would not be involved. Funds generated under this type of action would be reverted, or else put to use in the Medicaid program.

The meeting was then adjourned.

Wm RED Menahan
Chairman-Rep. Wm. "Red" Menahan

Debbie Jahnsen
Secretary

year, by the Dept. of Health. If there were any question about the operations of the establishments during these inspections, then the homes would be reported. Local sanitarians do these inspections. The hearing was then closed.

The committee went into executive session to consider the following bills:

SENATE BILL 105 - Rep. Vinger moved that it BE CONCURRED IN; Rep. Stobie seconded the motion. Rep. Harper left an "aye" vote on the bill; he had previously excused himself from the meeting. Motion carried with Rep. Gould opposed. The chairman Rep. Menahan said that he would carry this bill on the floor.

SENATE BILL 365 - Rep. Porter moved and Rep. Gunderson seconded that it BE CONCURRED IN. Motion carried unanimously. Rep. Porter agreed to carry this bill.

SENATE BILL 331 - Mr. Pyfer, the committee's attorney, presented some proposed amendments. The bill as it stands would create a direct conflict in the law; the amendments would clear this up. The sponsor concurs in these amendments. These changes were contained in the original bill, but some of the parties involved with the bill decided that the same measure as was introduced in the 44th Legislature was wanted. There was enough misunderstanding that the conflict this would create was going to take place anyway. After discussing the matter with Mr. Pyfer, the parties became agreeable to the bill's being amended so as to incorporate the provisions of both the former bill and the original bill which had been introduced this session. Rep. Porter then moved that SB 331 BE CONCURRED IN AS AMENDED. Discussion. Rep. Kenny stated that his optometrist objected to the bill. He feels that this would open the door to the companies that sell optical supplies to also sell contact lens replacements. Rep. Palmer pointed out that some optometrists would be opposed to the bill, but that the official stand on the part of the optometrists and the opthamologists was in favor of the bill. Rep. Menahan said that this bill was a compromise anyway, in view of the fact that the government was going to make new regulations covering this area. Rep. Feda then seconded Rep. Porter's motion. Motion carried with Rep. Kenny opposed. Rep. Porter agreed to carry the bill.

SENATE BILL 443 - Rep. Metcalf moved that it BE CONCURRED IN; motion seconded. He stated that mainly this was a consumer protection bill. Motion carried with Reps. Ryan, Vinger and Stobie opposed. Rep. Feda agreed to carry the bill on the floor.

Meeting was adjourned.

Wm 'RED' Menahan

Chairman - Rep. Wm. "Red" Menahan

Debbie Jameson

Secretary

SENATE BILL NO. 365

INTRODUCED BY ROBERTS

A BILL FOR AN ACT ENTITLED: "AN ACT SUBROGATING THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES TO THE RIGHTS OF RECIPIENTS OF MEDICAL ASSISTANCE; AMENDING SECTIONS 71-235, 71-308, 71-511, 71-1524, AND 93-2601-51, R.C.M. 1947."

WHEREAS, it is necessary that the department of social and rehabilitation services pursue third parties who may be liable for medical expenses incurred by recipients of medical assistance and relatives responsible for the support of recipients of public assistance.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. There is a new R.C.M. section numbered 71-241.1 that reads as follows:

71-241.1. Subrogation and third party liability. (1) The state department is subrogated to the right of each needy person who is a recipient of medical benefits under Titles XIX or XX of the Social Security Act to recover damages or compensation from a third party to the extent necessary to reimburse the state department for medical benefits paid to or on behalf of the needy person. UPON DETERMINATION THAT A THIRD PARTY IS LIABLE FOR THE MEDICAL EXPENSES OF A NEEDY PERSON UNDER THIS SECTION, THE DEPARTMENT SHALL IMMEDIATELY NOTIFY THE THIRD PARTY OF THE SUBROGATION.

(2) The state department may, in the name of the needy person to whom or on whose behalf medical benefits have been paid and to whose rights the department has been subrogated, commence and prosecute to final conclusion any action which may be necessary to recover from a third party compensation or damages for medical costs incurred by the needy person. From the amount collected from legal proceedings or as a result of settlement, the department shall retain the full amount previously paid as medical benefits, allocating to the county and federal government a share proportionate to their contribution and, after deducting the costs of the proceeding, deliver the remainder to the needy person. The total amounts awarded as compensation for pain and suffering or which are punitive in nature shall be delivered to the needy person. This section does not affect the needy person's right to initiate and prosecute to final conclusion an action for damages or compensation in his own name.

(3) A NEEDY PERSON WHO IS A RECIPIENT OF MEDICAL BENEFITS, OR HIS LEGAL REPRESENTATIVE, SHALL NOTIFY THE STATE DEPARTMENT OF ANY ACTION INITIATED, OR OF ANY COMPROMISE OR SETTLEMENT AGREED TO BY THE NEEDY PERSON, OR

HIS LEGAL REPRESENTATIVE, FOR THE RECOVERY OF COMPENSATION OR DAMAGES FOR MEDICAL EXPENSES TO WHICH MEDICAL BENEFITS HAVE BEEN APPLIED.

NOTICE SHALL BE GIVEN BY SERVICE UPON THE STATE DEPARTMENT OF THE LEGAL INSTRUMENT INITIATING THE ACTION OR EMBODYING THE COMPROMISE OR SETTLEMENT.

(4) NO PORTION OF ATTORNEY'S FEES MAY BE WITHHELD FROM THE AMOUNT COLLECTED FROM LEGAL PROCEEDINGS OR AS A RESULT OF SETTLEMENT WHICH IS DUE THE STATE DEPARTMENT UNDER SUBSECTION (1) WITHOUT PRIOR APPROVAL OF THE STATE DEPARTMENT.

~~(3)~~(5) As used in this section, "third party" means an individual, institution, corporation, or public or private agency which is or may be liable to pay all or part of the medical cost of injury, disease, or disability of a needy person to which Titles XIX or XX benefits have been applied, and includes but is not limited to insurers, health service organizations, and those liable in tort.

Section 2. Section 71-235, R.C.M. 1947, is amended to read as follows:

"71-235. Living relatives -- jointly and severally liable -- scale of contribution. (1) The living relatives of each needy person, named in this act, ~~--shall--be--and--they~~ hereby are made jointly and severally liable in the order named in ~~section~~ 71-233 to ~~such~~ the needy person for the

monthly amounts of money determined in accordance with the following scale, to wit:

RELATIVES' CONTRIBUTION SCALE

A. Net monthly income of responsible relatives in one family in dollars	B. Number of persons dependent upon income exclusive of applicant									
	1	2	3	4	5	6	7	8	9	10 and over
	C. Maximum required monthly contribution									
Under 304	0	0	0	0	0	0	0	0	0	0
304 to 399	22	0	0	0	0	0	0	0	0	0
400 to 489	43	14	0	0	0	0	0	0	0	0
490 to 619	72	43	29	22	7	0	0	0	0	0
620 to 739	101	72	58	50	36	29	14	0	0	0
740 to 869	130	101	86	79	65	58	43	29	14	0
870 to 1024	144	130	115	108	94	86	72	58	43	29
1025 to 1179	144	144	144	144	130	123	108	94	79	65
1180 to 1339	144	144	144	144	144	144	144	130	115	101
1340 and up	144	144	144	144	144	144	144	144	144	130

(2) For the purposes of this act:

~~(1)~~(a) A a needy person is one who is eligible for public assistance under the laws of this state; and

~~(2)~~(b) "Net net monthly income" ~~shall be deemed to~~ mean means one-twelfth ~~(1/12)~~ of the difference between the

net income for the taxable year as the term net income is defined in ~~section~~ 84-4901~~,--subsection--ten~~ (10)~~,~~ and the state income tax paid as determined by the state income tax return filed during the current year.

~~(3)~~ In those cases where both spouses classify as responsible relatives of needy persons during the same period of time, the liability for contribution of each ~~of said--spouses~~ spouse during that time ~~shall be considered to~~ be is one-half ~~(1/2)~~ of the amount shown in the scale established by this act.

(4) Whenever the responsible relative owes a duty of support to a minor dependent child and public assistance moneys have been paid to or on behalf of that child, the liability for contribution is measured by the lesser of the amount of public assistance paid or the amount of support ordered by court decree.

(5) A person who is receiving public assistance on behalf of a minor dependent child may not be held liable for contribution for the period during which public assistance was received."

Section 3. Section 71-308, R.C.M. 1947, is amended to read as follows:

"71-308. Medical aid and hospitalization. (1) Medical aid and hospitalization for nonresidents within the county and county residents unable to provide ~~such~~ these

necessities for themselves are the legal and financial duty and responsibility of the board of county commissioners, except as otherwise provided in other parts of this act, and are payable from the county poor fund. The board of county commissioners shall make provisions for competent and skilled medical or surgical services as are approved by the department of health and environmental sciences or the state medical association~~,~~ or, in the case of osteopathic practitioners, by the state osteopathic association or chiropractors by the state chiropractic association~~,~~ or optometrical services as approved by the Montana optometric association and or dental services as approved by the dental association. "Medical" or "medicine" as used in this act refers to the healing art as practiced by licensed practitioners.

(2) The board, in arranging for medical care for those unable to provide it for themselves, may have the care provided by the physicians appointed by the board who shall be known as county physicians or deputy county physicians, and may fix a rate of compensation for the furnishing of the medical attendance.

(3) The board of county commissioners shall make suitable arrangements to provide respectable burial for nonresidents within the county and county residents for whom ~~such~~ the expenses are not otherwise available.

(4) The department of social and rehabilitation services may promulgate rules to determine under what circumstances persons in the county are unable to provide medical aid and hospitalization for themselves, including the power to define the term "medically needy". ~~Provided, however, such~~ However, the definition may not allow payment by a county for general assistance-medical for persons whose income exceeds ~~three hundred percent (300%)~~ of the limitation for obtaining regular county general assistance.

(5) In any case where the county or state pays medical expenses or hospitalization for an individual, the county or state is subrogated to the claims of the physician or hospital to the extent of payment. To the extent necessary for reimbursement of medical benefits paid to or on behalf of an individual, the county or state is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical expenses. The provisions of 71-241.1 which relate to medical benefits provided under Titles XIX and XX of the Social Security Act apply to medical benefits provided for in this section."

Section 4. Section 71-511, R.C.M. 1947, is amended to read as follows:

"71-511. Payment of public assistance money -- subrogation of the department of social and rehabilitation services -- schedule of payments. (1) ~~Any~~ A payment of

public assistance money made to or for the benefit of ~~any~~ a dependent child ~~or children~~ creates a debt due and owing to the department of social and rehabilitation services by the natural or adoptive ~~parent or~~ parents who are legally responsible for the support of ~~such children~~ the child by statute or court decree in an amount equal to the amount of public assistance so paid. ~~Provided, that~~ However, where the support obligation is based upon a court decree, the debt ~~shall be~~ is limited to the amount of ~~said~~ the court decree.

(2) The department ~~of social and rehabilitation services shall be~~ is subrogated to the right of ~~said~~ the child ~~or children~~ or person having the care, custody, and control of ~~said~~ the child ~~or children~~ to prosecute ~~or maintain and recover upon~~ any support action or execute any administrative remedy existing under the laws of the state ~~of Montana~~ to obtain reimbursement of monies thus expended. If a court decree enters judgment for an amount of support to be paid by an obligor parent, the department ~~shall be~~ is subrogated to the debt created by ~~such~~ the order and ~~said~~ the money judgment ~~shall be deemed to be~~ is in favor of the department ~~of social and rehabilitation services~~. No obligee may commence an action to recover support due and owing to him without first filing an affidavit with the court stating whether he has received public assistance from any source and, if he has received public assistance, that he has

notified the state department in writing of the pending action.

(3) In no case ~~shall~~ may a debt arising under this section be incurred by or collected from a parent or other person ~~who~~ while he is the recipient of public assistance monies for the benefit of minor dependent children ~~for the period such person or persons are in such status~~.

(4) The remedies herein provided are in addition to and not in lieu of existing common law and statutory law.

(5) The department ~~of social and rehabilitation services~~ or its legal representatives may at any time consistent with the income, earning capacity, and resources of the debtor, petition the court having jurisdiction over the particular case to set or reset a level and schedule ~~or~~ of payments to be paid upon the debt."

Section 5. Section 71-1524, R.C.M. 1947, is amended to read as follows:

"71-1524. Exclusion of lien. No applicant hereunder ~~shall~~ may be required to execute an agreement for lien on his real property. No lien may be imposed against the property of ~~any~~ an individual prior to his death on account of medical assistance paid or to be paid on his behalf (except pursuant to the judgment of a court on account of benefits incorrectly paid on behalf of ~~such~~ the individual). There ~~shall~~ may be no adjustment or recovery (except, in the

case of an individual who was ~~sixty-five (65)~~ years of age or older when he received ~~such~~ the assistance, from his estate, and then only after the death of his surviving spouse, if any, and only at a time when he has no surviving child who is under age ~~eighteen (18)~~ or is blind or permanently and totally disabled) of any medical assistance correctly paid on behalf of ~~such~~ an individual. To the extent necessary for reimbursement of medical assistance paid to an individual, the state department is subrogated to the rights of the individual to recover from a third party who may be liable to pay the medical expenses, as provided in 71-241.1. Recoveries shall be prorated to the federal government and the state in the proportion to which each contributed to the medical assistance. Recovery for medical assistance paid prior to July 1, 1974, shall be prorated to reimburse the county share of participation. The provisions of this act are hereby extended to provide for the recovery of all medical assistance paid under ~~sections~~ 71-1511 through 71-1524 and likewise to all medical aid to the aged assistance paid by the state department during the period of time July 1, 1965, through June 30, 1967."

Section 6. Section 93-2601-51, R.C.M. 1947, is amended to read as follows:

"93-2601-51. Contents and filing of petition for support -- venue. ~~(a)~~ (1) The petition shall be verified and

shall state the name and, so far as known to the obligee, the address and circumstances of the obligor and the persons for whom support is sought, and all other pertinent information. The obligee may include in or attach to the petition any information which may help in locating or identifying the obligor including a photograph of the obligor, a description of any distinguishing marks on his person, other names and aliases by which he has been or is known, the name of his employer, his fingerprints, and his social security number.

(2) At the time of filing the petition the obligee shall also file with the court an affidavit as required by 71-511 stating whether he has received public assistance from any source and, if he has received public assistance, that he has notified the department of social and rehabilitation services in writing of the pending action.

~~(b)~~(3) The petition may be filed in the appropriate court of any state in which the obligee resides. The court ~~shall~~ may not decline or refuse to accept and forward the petition on the ground that it should be filed with some other court of this or any other state where there is pending another action for divorce, separation, annulment, dissolution, habeas corpus, adoption, or custody between the same parties or where another court has already issued a support order in some other proceeding and has retained

jurisdiction for its enforcement."

Section 7. Saving clause. This act does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before July 1, 1977.

Section 8. Severability. If a part of this act is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this act is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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